IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.3191 OF 2006

Manoj Ramniklal Chheda ... ..Applicant

Versus

Mohammed Hussen Merchant & Anr. ... ..Respondents

Mr. S.V.Marwadi for applicant

Mr. S.S.Pednekar, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 13TH NOVEMBER, 2006

P.C.:

1. This criminal application prays for cancellation of bail granted to the original accused no.1 on 20th July 2006. The bail has been granted to accused no.1 by a common order of the learned Metropolitan Magistrate, 26th Court, Borivli, Mumbai.

2. This application for cancellation of bail is with regard to the order in favour of the applicant-original

accused no.1. However, after taking instructions Mr. Marwadi makes a statement that he does not press the application for cancellation.

3. Mr. Marwadi has invited my attention to an order passed by me on the anticipatory bail application preferred by applicant Mohammed Hussen Merchant (respondent no.1 herein). He submits that the observations made by this court with regard to the dispute being essentially over development rights in an immovable property and therefore civil in nature, are misused all throughout and even the investigating officer is not proceeding with the investigation relying upon these observations.

4. In this regard, he invites my attention to the affidavit which is filed by the Investigating Officer on an application preferred by the complainant under Section 173(8) of Cr.P.C. In other words, by this application, the applicant before me prayed that the Hon’ble Magistrate should direct further investigation. However, the I.O. in his affidavit despite referring to an communication dated 3.7.2006 has expressed an opinion that the civil suit being pending there is no need to proceed further and

the application be rejected.

5. It is based upon the statement in this affidavit that I had called upon the learned APP to take instructions. Accordingly, after adjourning the matter till today the learned APP states that the Investigation Officer, who is present in court, instructs him to make a further statement that he will proceed with the matter strictly in accordance with law and uninfluenced by the order passed by this Court on anticipatory bail application so also his affidavit in trial court, a copy of which is annexed at pages 44 to 50 of the paper book.

6. In my view, having clarified that the observations made were during the course of the hearing of the anticipatory bail application of the respondent no.1 and should not influence anybody including the Investigating machinery during investigation and trial nothing more need be said. The I.O. ought not to have taken such a stand during the course of the investigation. It was his plain duty to investigate into the matter and whether any offence is disclosed or not is a matter for the court to decide after conclusion of the enquiry and investigation at the trial. It is therefore, clarified that all

observations made by the I.O. in his affidavit were wholly unwarranted and unnecessary. The same appear to be contradictory and confusing as well. If he is convinced of the criminal behaviour of the accused no.1 then it was his duty to go ahead with investigation in accordance with law. Be that as it may, now a statement is made by the I.O. who is present in the court. It is not necessary to give any further clarification. The application is disposed of in the light of the above.

7. The I.O. has made a statement that he would conclude the further investigation within a period of three months from today and make necessary report to the trial court.

(S.C.Dharmadhikari, J.)